

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 885 of 1987

Date of decision: 15-09-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAVNAGAR MUNICIPAL NORKARYAT SABHA

Versus

BHAVNAGAR MUNICIPAL CORP.

Appearance:

MR SK JHAVERI for Petitioner
MR JR NANAVATI for Respondent No. 1
Ms. Siddhi Talati for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/09/97

ORAL JUDGEMENT

Identical matter being special civil application No.3167 of 1986 has already been decided by this Court and as such I consider it proper to take up this matter also for final hearing.

Heard the learned counsel for the parties.

Challenge has been made by the Bhavnagar Municipal Nokaryat Sabha to the order of the Industrial Tribunal dated 27th October, 1986 in Reference (IT) No.49/84. Further challenge has been made to the order dated 11th April, 1986 of the respondent Government made under section 451 of the Bombay Provincial Municipal Corporation Act, 1949, suspending Resolution No.36 of the Corporation dated 23rd December, 1985. The dispute inter se of the parties is that the posts in the Corporation should be filled in by promotion and not by direct recruitment. The petitioner made this claim on the basis of agreement. Industrial dispute is pending in Reference (I.T.) No.49/84 (now 8/91) before the Industrial Tribunal, Bhavnagar. Earlier also in a special civil application, this court had given direction that in case Bhavnagar Municipal Corporation wants to make any appointment to the posts by direct recruitment, then it may move an application before the Industrial Tribunal for taking permission of the same, and shall abide by the direction of the Tribunal. In pursuance of the said order of this court the Corporation filed application for grant of permission to it for making direct recruitment, and under the impugned order the Industrial Tribunal granted permission to fill up 10 posts only by direct recruitment on condition that all those appointments will be made on ad hoc basis, subject to the decision in the pending reference. The learned counsel for the respondent Corporation stated that in pursuance of that order of the Tribunal ten appointments have been made. This court has not granted any interim relief in this special civil application. However, no grievance could have been made by the petitioner on those appointments as those appointments are ad hoc appointments subject to the decision of the pending reference. In this special civil application this court has given direction to the Industrial Tribunal to decide the reference within six months, but is a different matter that despite passing 11 years the reference has not been decided. Pendency of the reference before the Industrial Tribunal is unnecessarily giving out cause to either party for filing this special civil application before this Court. This

certainly would have been avoidable litigation in case reference would have been decided by the Industrial Tribunal as directed by this court within the stipulated period. Be that as it may.

2. Appointments have been made and when these appointments are adhoc and subject to the decision in the reference, this special civil application is wholly misconceived. Moreover, this special civil application is against interlocutory order of the Tribunal, and otherwise not tenable, as it is not causing any prejudice to the members of the petitioner association. Normally the labour union should not stall proceedings of the Industrial Tribunal by filing special civil application against interlocutory orders, and more so when the interlocutory order is of innocuous nature. By such orders matter has not been decided on merits. This special civil application is therefore disposed of with the direction that the Industrial Tribunal at Bhavnagar may dispose of Reference No.8/91 within a period of three months from the date of receipt of copy of this order. As the reference has been ordered to be disposed of as aforesaid, the prayer made in the petition does not survive at this stage. The petition is dismissed. Rule discharged. No order as to costs.

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